

# ANDHRA PRADESH HIGH COURT

Mohd. Basha

Vs.

Secretary, Regional Transport Authority

Writ Petns. No. 6771 of 1973 and 639, 983 and 1141 of 1974

(Chinnappa Reddy, J.)

25.03.1974

## JUDGMENT

### **Chinnappa Reddy, J.**

1. The petitioners in these four applications under Article 226 of the Constitution are owners of Motor Vehicles hired from time to time as contract carriages. They contend that hitherto they used to apply for the grant of special permits under Section 63 (6) of the Motor Vehicles Act in the prescribed form 'PTOVA' and that special permits used to be granted in the prescribed form 'PTOV'. Neither the rules nor the prescribed forms require them to furnish the names of all the passengers who propose to utilize the contract carriage under the special permit. It was never considered necessary. Recently the Regional Transport Authorities of the District of Krishna, Kurnool, Guntur and West Godavari, have started insisting on the applicants for special permits submitting along with the applications for special permits complete lists of passengers proposed to be carried by the contract carriages under the special permits to be issued. The petitioners object to the insistence of the Transport Authorities to furnish a list of passengers. They have filed these applications under Article 226 of the Constitution to direct the Transport Authorities not to insist on the petitioners furnishing a list of passengers.

2. Sri P. Ramakoti, learned counsel for the petitioners in W. Ps. Nos. 639 and 983 of 1974 and Srimathi K. Amareswari, learned counsel for the petitioners in W. Ps. Nos. 6771 of 1973 and 1141 of 1974 argue that the transport authorities have no right to insist upon an applicant for a special permit furnishing a list of passengers. Neither the rules nor the prescribed forms require an applicant to furnish such a list. The act also does not contemplate it. It is argued that it is impracticable to furnish such a list since the names of all passengers who are likely to use the contract carriage may not be known till the last minute. According to the learned counsel, it is not necessary that the application for a special permit should be preceded by a contract. They contend that the contract between the owner of the vehicle and the parties proposing to travel may be entered into at any time before the contract carriage starts on its journey. They also argue that often times some tourist agency or an individual enters into a contract with the owner of the vehicle and the owner of the vehicle may not know the names of the passengers until they board the vehicle. Therefore, they argue that if the authorities are anxious to prevent an abuse of the

permit by contract carriages being used as stage carriages they may well insist on every contract carriage maintaining a list of passengers travelling in the vehicle as proposed in the proposed amendment to Rule 213. The insistence on a complete list of passengers being furnished along with an application for a special permit, they claim, is illegal and unjustified.

3. Section 2 (3) of the Motor Vehicles Act defines 'Contract carriage' and is as follows :-

"(3) "Contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward under a contract expressed or implied for the use of vehicle as a whole at or for a fixed or agreed rate or sum –

(i) on a time basis whether or not with reference to any route or distance or,  
(ii) from one point to another, and in either case without stopping to pick up, or set down along the line of route passengers not included in the contract; and includes a motor cab notwithstanding that the passengers may pay separate fares."

(iii) Section 63 (6) which provides for the grant of a special permit is as follows :-

"Notwithstanding anything contained in sub-section (1), but subject to any rules that may be made under this Act, the Regional Transport Authority of any one region may, for the convenience of the public, grant a special permit in relation to a public service vehicle for carrying a passenger or passengers for hire or reward under a contract, express or implied for the use of the vehicle as a whole without stopping to pick up or set down along the line of route passengers not included in the contract, and in every case where such special permit is granted, the Regional Transport Authority shall assign to the vehicle, for display thereon, a special distinguishing mark in the form and manner specified by the Central Government and such special permit shall be valid in any other region or State without the counter-signature of the Regional Transport Authority of the other State, as the case may be." These two provisions read together show that a special permit may be granted if (1) a passenger or passengers are proposed to be carried for hire under a contract, (2) the contract is for the use of the vehicle as a whole and (3) passengers not included in the contract are not to be picked up or set down along the line of the route. Clearly the contract must precede the grant of the permit. Equally clearly the identity of the passengers included in the contract must be definite and known before the grant of the permit; otherwise, the reference to 'passengers not included in the contract' becomes meaningless. Therefore, a person applying for a special permit must first enter into a contract for the use of the vehicle as a whole to carry specified passengers before he can apply for a special permit. The definition of 'contract carriage' if contrasted with the definition of 'stage carriage' also brings out this position. 'Stage carriage' is defined by Section 2 (29) as follows :- "Stage Carriage" means a motor vehicle carrying or adapted to carry more than six persons excluding the driver which carries passengers for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey.'

4. In the case of a contract carriage, there must be a prior contract, the passengers are settled in advance and there is no stopping on the line to pick up or set down a passenger. In the case of a stage carriage, there is no prior contract, passengers are not settled in advance and passengers may be picked up or set down at intermediate stage. In *Roshan Lal v. State of U. P.*<sup>1</sup>, the distinction between a contract carriage and a stage carriage was described as follows :-

"The distinction between the two is this : the contract carriage is engaged for the whole of the journey between two points for carriage of a person or persons hiring it but it has not the right to pick up other passengers en route. The stage carriage on the other hand, runs between two points irrespective of any prior contract and it is boarded by passengers en route who pay the fare for the distance they propose to travel."

5. Rule 205 (vi) of the Andhra Pradesh Motor Vehicles Rules prescribes that every application for a special permit under Section 63 (6) shall be in Form PTOVA. Rule 208 (viii) prescribes that a special permit under Section 63 (6) shall be in Form PTOV. Forms PTOVA and PTOV require that the name of the person entering into a contract with the owner of the vehicle should be mentioned, as also the number of persons constituting the party proposing to use the vehicle. The two forms do not, however, provide for the names of all the passengers included in the contract being mentioned. Therefore, it is argued by the learned counsel, the transport authorities cannot go beyond the requirements of the prescribed forms and insist on the names of all the passengers included in the contract being furnished along with the application for special permit. I do not agree with the submission of the learned counsel. I have already observed that the identity of passengers included in the contract must be definite and known before the grant of the permit. That is contemplated by Section 63 (6) of the Act. If in order to satisfy itself that the application for the grant of a special permit is a genuine application for the purposes mentioned in Section 63 (6) of the Act and is not intended to be a camouflage for using the vehicle unauthorisedly it is open to the Regional Transport Authority to require the applicant to furnish the necessary information contemplated by Section 63 (6) of the Act. The fact that the prescribed forms do not provide for the furnishing of such information does not mean that the transport authority is barred from seeking such information. A regional transport authority receiving an application for a special permit in the prescribed form may be satisfied about the bona fides of the applicant and may straightway grant the permit. On the other hand, he may seek further information to satisfy himself about the bona fides of the applicant in relation to the requirements of Section 63 (6). Seeking of such information is not prohibited unless it is against the statute. All that the prescription of a form means is that the particulars prescribed in the form are bound to be furnished before the application can be considered and those are the minimum particulars required to be furnished. The mere fact that the form does not provide for certain particulars does not mean that the authority granting the permit cannot ask for those particulars. The prescription of forms is only for the convenience of the applicant and the authority. The form prescribed by the rules should not be treated as a questionnaire which alone need be answered end no more. The omission of the rule making authority to make rules at all or to make rules to meet certain situations does not bar a statutory authority from acting under the statute. (Vide *Madras and Southern Maharashtra Railway Company Ltd. v. Municipal Council, Bezwada*<sup>2</sup>, approved by the Privy Council in *Madras and Southern Maharashtra Railway Co. Ltd. v. Bezwada Municipality*<sup>3</sup>, Similarly the failure of the rule making authority to prescribe a comprehensive form requiring all particulars necessary for the exercise of power by the statutory authority to be mentioned does

not prohibit the

<sup>1</sup> AIR 1965 SC 991

<sup>3</sup>(1944) 2 Mad LJ 25

<sup>2</sup>(1941) 2 Mad LJ 189 : (AIR 1941 Mad 641)

statutory authority from requiring necessary further particulars to be furnished. It might be a different matter if the statute itself had mentioned what particulars should be furnished in the form and a form had been prescribed pursuant to the statutory direction. In the present case, Section 63 (6) does not itself prescribe the particulars to be mentioned in the application for a special permit. The transport authority is, therefore, at liberty to ask for particulars necessary for the exercise of his power though no such particulars are required to be furnished by the prescribed form. If the Regional Transport Authority seeks information not contemplated by Section 63 (6) the transport operators may legitimately complain. But if the Regional Transport Authority does not seek any information not contemplated by Section 63 (6) but seeks information contemplated by Section 63 (6) the transport operators cannot have any legitimate grievance.

6. It is said that insistence on the furnishing of the names of all the passengers included in the contract may not be practicable since changes are possible till the very last minute. That is the very thing which is sought to be prevented. Neither the person entering into an agreement with the owner of the vehicle nor the owner of the vehicle can be allowed to pick up passengers on the ground that seats are available. That is precisely what is expected to happen if the list of passengers included in the contract is not finalised at the time of the contract and before the application is submitted to the transport authorities. That is also precisely what leads to abuse of the permit. In the counter-affidavit filed on behalf of the respondents it is stated : "the past experience of the Transport Department clearly proved that a contract carriage permit is obtained with the ostensible purpose of taking a contract party from one place to another place but very often persons who are not members of the contract party are picked up at the starting point itself or at intermediary stations collecting individual fares. Thus the contract vehicles ply contrary to the permit that is granted and are plied as stage carriages collecting individual fares, picking up passengers who are in no way connected with the contract party. The list of passengers is a very important piece of circumstantial evidence either to prove or disprove that a contract carriage is used as a stage carriage. In this connection it may be relevant for me to state that the tax payable for a contract carriage is much less than the tax payable for a stage carriage and the operators of contract carriage are abusing the concession rate of tax given to them and are plying their vehicles as stage carriages. It is not always possible to check all the vehicles to detect the misuse. With a view to prevent the misuse of these vehicles as stage carriages, the contract carriage operators are required to furnish the list of the names of the persons of the contract party, so that it may be possible for any checking officer to verify whether the persons that are travelling at the time of check are the members of the contract party that have originally engaged the vehicle, otherwise it would become difficult to verify whether the passengers really belong to the contract party or not as the owner of the vehicle always asserts falsely that the passengers that are found on a check are members of a contract party, but not the persons picked up on the way. When the misuse is detected and proceedings are taken under the M. V. Act and the M. V. T. Act the operators are insisting that the passengers should be examined and very often the passengers belong to different places in the State."Further I do not see any insurmountable difficulty in having the names of passengers changed in genuine cases even after the grant of the permit by placing the necessary information before the authority concerned.

7. It is argued that even the proposed amendment of Rule 213 does not require a list of passengers to be furnished along with the application for the permits but only requires that a list should be maintained in the vehicle. That does not mean that a list need not be furnished to the authority granting the permit. The list to be maintained in the vehicle is for the purpose of checking at intermediate stages. The list to be furnished along with the application is for the information of the transport authority to satisfy itself that the application is a genuine application, under Section 63 (6). I am satisfied that the Regional Transport Authorities have not exceeded their authority in insisting upon the transport operators furnishing lists of passengers along with application for special permits. The Writ petitions are, therefore, dismissed with costs. Advocate's fee Rs. 100 in each.  
Petitions dismissed.